



FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request;

Extension

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (“PRA”), the Federal Trade Commission (“FTC” or “Commission”) is seeking public comment on its proposal to extend for an additional three years the Office of Management and Budget clearance for information collection requirements in its Fair Credit Reporting Risk-Based Pricing Regulations (“Risk-Based Pricing Rule” or “Rule”), which applies to certain motor vehicle dealers, and its shared enforcement with the Consumer Financial Protection Bureau (“CFPB”) of the risk-based pricing provisions (Subpart H) of the CFPB’s Regulation V regarding other entities. That clearance expires on September 30, 2023.

DATES: Comments must be filed by [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write “Risk-Based Pricing Rule, PRA Comment, P145403,” on your comment, and file your comment online at <https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Genevieve Bonan, Attorney, Division of Privacy and Identity Protection, Bureau of Consumer Protection, 400 7th Street, SW, Drop 5422, Washington, DC 20024, gbonan@ftc.gov, (202) 326-3139.

SUPPLEMENTARY INFORMATION:

Title of Collection: Fair Credit Reporting Risk-Based Pricing Regulations, 16 CFR part 640.

OMB Control Number: 3084-0145.

Type of Review: Extension without change of currently approved collection.

Abstract: The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) was enacted on July 21, 2010.¹ The Dodd-Frank Act transferred to the CFPB most of the FTC’s rulemaking authority for the risk-based pricing provisions of the Fair Credit Reporting Act (“FCRA”),² on July 21, 2011.³ After the enactment of the Dodd-Frank Act, the FTC retains rulemaking authority for its Risk-Based Pricing Rule (16 CFR part 640) solely for motor vehicle dealers described in section 1029(a) of the Dodd-Frank Act that are predominantly engaged in the sale and servicing of motor vehicles, the leasing and servicing of motor vehicles, or both.⁴ The FTC shares enforcement authority with the CFPB for provisions of Regulation V Subpart H (12 CFR 1022.70–1022.75) that apply to entities other than motor vehicle dealers described above.

The Risk-Based Pricing Rule and the CFPB’s Regulation V require that a creditor provide a risk-based pricing notice to a consumer when the creditor uses a consumer report to grant or extend credit to the consumer on material terms that are materially less favorable than the most favorable terms available to a substantial proportion of consumers from or through that creditor.⁵ Additionally, these provisions require disclosure of credit scores and information

¹ Pub. L. 111-203, 124 Stat. 1376 (2010).

² 15 U.S.C. 1681 *et seq.*

³ Dodd-Frank Act, sec. 1061. This date was the “designated transfer date” established by the Treasury Department under the Dodd-Frank Act. *See* Dep’t of the Treasury, *Bureau of Consumer Financial Protection; Designated Transfer Date*, 75 FR 57252, 57253 (Sept. 20, 2010); *see also* Dodd-Frank Act, sec. 1062.

⁴ *See* Dodd-Frank Act, secs. 1029(a), (c).

⁵ 16 CFR 640.3-640.4; 12 CFR 1022.72–1022.73.

relating to credit scores in risk-based pricing notices if a credit score of the consumer is used in setting the material terms of credit.

Affected Public: Private Sector: Businesses and other for-profit entities.

Estimated Annual Burden Hours: 8,951,460.

Estimated Annual Labor Costs: \$179,566,288.

As required by section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), the FTC is providing this opportunity for public comment before requesting that OMB extend the existing clearance for the information collection requirements contained in the Risk-Based Pricing Rule.

Burden Statement:

The Commission estimates that approximately 238,346 entities are covered by the FTC and CFPB Rules,⁶ including 60,036 motor vehicle dealers that are subject to exclusive FTC jurisdiction.⁷ The FTC assumes the full burden for the motor vehicle dealers subject to its exclusive jurisdiction and shares burden for the remaining entities subject to both CFPB and FTC enforcement authority. Accordingly, as an analytical framework, the FTC estimates burden pertaining to respondents over which both agencies have shared enforcement authority, divides the resulting total by one-half to reflect the FTC's shared burden, and adds to the resulting subtotal the estimated burden for motor vehicle dealers over which the FTC retains exclusive rulemaking and enforcement authority.

⁶ See NAICS Association, LLC, *NAICS Code Drill-Down Table*, available at <https://www.naics.com/search/> (the categories of covered entities include "Furniture and Home Furnishings Retailers," "Electronics and Appliance Retailers," "Automobile Dealers," "Other Motor Vehicle Dealers," "Consumer Lending," and "Utilities") (last visited Feb. 8, 2023). See also U.S. Census Bureau, *All Sectors: County Business Patterns, including ZIP Code Business Patterns, by Legal Form of Organization and Employment Size Class for the U.S., States, and Selected Geographies: 2020*, <https://data.census.gov/table?q=Business+and+Economy&n=221> (for utilities). The estimate also includes state-chartered credit unions, which are subject to the Commission's jurisdiction. See 15 U.S.C. 1681s. For the latter category, Commission staff relied on estimates from the Credit Union National Association for the number of non-federal credit unions. See National Credit Union Administration, *2022q3 Call Report Data: Federally Insured Credit Unions*, <https://ncua.gov/files/publications/analysis/federally-insured-credit-union-list-september-2022.zip> (Sep. 2022).

⁷ See U.S. Census Bureau, *All Sectors: County Business Patterns, including ZIP Code Business Patterns, by Legal Form of Organization and Employment Size Class for the U.S., States, and Selected Geographies: 2020*, <https://data.census.gov/table?q=car+dealers+in+2020&n=44111:44112:44121:44122:441228&tid=CBP2020.CB2000CBP&nkd=EMPSZES~001,LFO~001>. This total is based on estimates that there are 46,569 franchise/new car and independent/used car dealers in the U.S., as well as 2,806 recreational vehicle dealers, 4,141 boat dealers, and 6,520 ATV/other motor vehicle dealers.

This yields a total of 149,191 respondents for whom the FTC accounts for burden (60,036 motor vehicle dealers plus one-half (*i.e.*, 89,155) of the remaining 178,310 entities subject to shared FTC-CFPB jurisdiction). The FTC estimates that covered entities spend approximately 60 hours per year to comply with the Rule’s requirements. As a result, the FTC estimates that the total burden hours attributable to FTC requirements are 8,951,460 hours (149,161 respondents × 60 hours).

Labor costs are derived by applying estimated hourly cost figures to the burden hours described above. The FTC assumes that respondents will use correspondence clerks, at a mean hourly wage of \$20.06,⁸ to modify and distribute notices to consumers, for a cumulative labor cost total of \$179,566,288 (8,951,460 hours x \$20.06 per hour).

The FTC believes that the FTC and CFPB rules impose negligible capital or other non-labor costs, as the affected entities are likely to have the necessary supplies and/or equipment already (*e.g.*, offices and computers) for the information collections discussed above.

Request for Comment:

Pursuant to section 3506(c)(2)(A) of the PRA, the FTC invites comments on: (1) whether the disclosure and recordkeeping requirements are necessary, including whether the information will be practically useful; (2) the accuracy of our burden estimates, including whether the methodology and assumptions used are valid; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information.

For the FTC to consider a comment, we must receive it on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Your comment, including your name and your state, will be placed on the public record of this proceeding, including the <https://www.regulations.gov> website.

⁸ See Bureau of Labor Statistics, Occupational Employment and Wages News Release, May 2021, Table 1, “National employment and wage data from the Occupational Employment Statistics survey by occupation, May 2021,” available at <https://www.bls.gov/news.release/ocwage.htm>.

You can file a comment online or on paper. Due to the public health emergency in response to the COVID-19 outbreak and the agency's heightened security screening, postal mail addressed to the Commission will be subject to delay. We encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you file your comment on paper, write "Risk-Based Pricing Rule, PRA Comment, P145403," on your comment and on the envelope, and mail it to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue, NW, Suite CC-5610 (Annex J), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street, SW, 5th Floor, Suite 5610 (Annex J), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Because your comment will become publicly available at <https://www.regulations.gov>, you are solely responsible for making sure that your comment does not include any sensitive or confidential information. In particular, your comment should not include any sensitive personal information, such as your or anyone else's Social Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including, in particular, competitively sensitive information, such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must (1) be filed in paper form, (2) be clearly labeled "Confidential," and (3) comply with FTC Rule 4.9(c).

In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted publicly at www.regulations.gov, we cannot redact or remove your comment unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

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